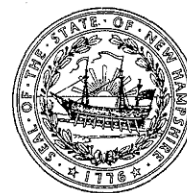




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.
December 22, 2003

Edward M. O'Connor
d/b/a Tap'd Out Artesian Well Company
1625 Province Road West
Strafford, NH 03884

NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 02-038 (WATER DIVISION)

Dear Mr. O'Connor:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 02-038 issued October 14, 2002, the Water Division sought an administrative fine totaling \$2,000 against you for alleged violations of RSA 482-B:5 arising from unauthorized work conducted property located at 31 Lower Camp Road, Northwood, NH ("the Property"). Pursuant to RSA 482-B:16, II, and based on my review of the evidence presented at the hearing held on this matter on November 10, 2003, I have concluded that a fine of \$1,800 is appropriate, with \$1,500 suspended, as set forth below:

- ▶ A fine in the amount of \$2,000 is imposed against you for constructing a well without first obtaining a water well contractor license.
- ▶ Based on Env-C 601.09(c)(3), which requires reductions in fines based on certain mitigating factors, the fine is reduced by 10 percent, to \$1,800.
- ▶ Of the \$1,800 fine imposed, \$1,500 is suspended conditional on you and Tap'd Out Artesian Well Company not violating RSA 482-B, for a period of two years from the date of the decision. If you or Tap'd Out Artesian Well Company violates RSA 482-B within two years from the date of the decision, regardless of when the final determination is made that the violation occurred, the \$1,500 suspended portion of the fine shall be due and payable.

The \$300 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the DES Legal Unit/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

RSA 482-B establishes the New Hampshire Water Well Board ("the Board"). The Board is responsible for regulating water well contractors to ensure that the health of the people of New Hampshire, and the state's groundwater resources, are protected. RSA 482-B:5 requires a person to obtain a water well contractor license from the Board prior to engaging in the business of constructing a well.

The record clearly shows that you constructed the well on the Property without a license.

You failed to pass the water well contractor license exam in June 2002. Consequently, you were not a licensed water well contractor when you constructed the well on the Property in July 2002.

The original fine recommended by the Division was substantially too high, and from the record, it appears that you have taken steps to comply with the statute and rules by obtaining your water well contractor's license. Thus, I have elected to suspend a portion of the fine conditional on you not violating RSA 482-B, for a period of two years from the date of the decision.

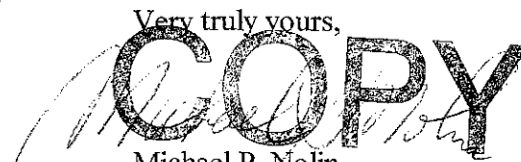
This decision is based on the following findings and conclusions:

1. Edward O'Connor d/b/a/ Tap'd out Artesian Well Company is a New Hampshire corporation having a mailing address of 1625 Province Road West, Strafford, NH.
2. RSA 482-B:5 requires a person to obtain a water well contractor license from the Water Well Board ("the Board") prior to engaging in the business of constructing a well.
3. On May 31, 2002, Mr. O'Connor filed an application for a water well contractor license with the Board.
4. On June 13, 2002, Mr. O'Connor took the written exam for a water well contractors license for cable tool drilling.
5. Effective July 15, 2002, Mr. O'Connor's business, Tap'd Out Artesian Well Company, was registered with the New Hampshire Secretary of State.
6. By letter dated July 16, 2002, DES notified Mr. O'Connor that he failed the exam. He was encouraged to re-take the exam which was scheduled for September 12, 2002.
7. On July 30, 2002, DES staff observed a well being constructed by cable tool drill on property owned by Glenna Riel and located at 31 Lower Camp Road, Northwood, NH, ("the Property"). Ms. Riel contracted with Mr. O'Connor to construct the well.
8. Mr. O'Connor violated RSA 482-B:5 by constructing a well at 31 Lower Camp Road, Northwood, NH, without first obtaining a water well contractor license.
9. For a violation of RSA 482-B:5, Env-C 616.02(a) authorizes a fine of \$2,000.
10. Under Env-C 601.09(c), the imposed fine must be reduced by 10 percent if the Respondent proves certain mitigating factors by a preponderance of the evidence.
11. Mr. O'Connor showed that he does not have a history of noncompliance with the statutes, rules, or permits of the department. Under Env-C 601.09(c)(3), the fine for the violation is reduced by 10 percent.

You violated RSA 482-B:5 by constructing a well at the Property without first obtaining a water well contractor license. Thus, for the reasons discussed above, I have concluded that the \$300 fine imposed is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206.

Very truly yours,


Michael P. Nolin
Commissioner

Enclosure

cc: Water Well Board
Rene Pelletier, Program Manager, Land Resources Management Program
Harrison Mackey, Licensing Coordinator, DES
Anne Edwards, Esq., NHAGO
Jennifer Patterson, Esq., NHAGO
Mark Harbaugh, DES Compliance Attorney
Gretchen Rule, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

29 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

(a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;

(b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;

(c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;

(d) A clear and concise statement of the specific relief or ruling requested;

(e) A copy of the decision which is the subject of the motion; and

(f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99